UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

AT&T Mobility, LLC[1]

Employer

and

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 37083, AFL-CIO — Case 19-RD-3854

Union

and

JOE SIMPSON, an Individual

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended ("the Act"), a hearing was held before a hearing officer of the National Labor Relations Board, ("the Board").[2] Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I make the following findings and conclusions.[3]

I. SUMMARY

AT&T Mobility, LLC ("the Employer") operates a nationwide communications network. The Employer and Communications Workers of America ("the Union") are party to several collective bargaining agreements covering employees in a variety of classifications. In September of 2009, pursuant to a recognition agreement with the Union, the Employer voluntarily recognized the Union as the exclusive collective bargaining representative of a

[1] The names of all parties appear as amended at hearing.

[2] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[3] The parties submitted timely briefs, which I have carefully considered.

unit of "network" employees employed at various locations in the State of Washington.[4] Following recognition, the parties' regional collective bargaining agreement was applied to the bargaining unit.[5]

Following recognition, the Employer submitted notice of its voluntary recognition to Region 19 of the Board, and as part of case 19-VR-076, posted workplace notices provided by the Board notifying employees of their right to file a decertification petition within a 45-day window period, pursuant to the Board's decision in *Dana Corp*., 351 NLRB 434 (2007). By the instant petition, one of the newly represented employees, Joe Simpson ("Petitioner"), seeks a decertification election among the newly represented Washington network employees.

The Union opposes the petition, asserting the Board's recognition bar, as modified in *Dana*, bars the instant petition.[6] Specifically, the Union maintains that because the instant petition was filed after the 45-day window period had passed, it is untimely. The Union also asserts that the existing collective bargaining agreement, applied to the unit following recognition, acts as a contract bar to further processing of the instant petition.[7] In response, Petitioner asserts the question is not one of timeliness, as that analysis would only apply if a proper *Dana* posting occurred. Here, Petitioner asserts that the required notice was deficient at two of the Employer's facilities, including the facility where the Petitioner and a majority of the unit employees worked. Accordingly, as modified in *Dana*, the precondition for a recognition or contract bar has not been met, and a decertification petition filed at any time would be appropriate.

Based on the record evidence and the parties' contentions and arguments I find, consistent with Petitioner, that the notice at Petitioner's work location was significantly deficient, and accordingly the instant petition is proper. Having failed to meet the requirement of putting employees on notice of a 45-day window to file a decertification petition, the Union cannot now claim that recognition and contract bar principles prevent the instant petition. Further, the question of timeliness is moot, as that question presupposes a valid posting. In light of the above, the instant petition is appropriate.

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[4] The recognized unit is described as follows:

> All full time and regular part time AT&T Mobility employees in the Network Business Unit, based in the State of Washington, including employees employed in the classifications of Clerk Administrative, Engineer Associate Wireless Translations, Engineer Wireless Translations, Engineer II Network (NE), Engineer III Network (NE), Network Control Engineer, Senior Network Control Engineer, Technician I Cell, Technician II Cell, Technician III Cell, Technician II Switch, Technician III Switch, but excluding professional employees, confidential employees, managerial employees, and guards and supervisors as defined in the National Labor Relations Act.

[5] The applicable collective bargaining agreement is effective February 8, 2009, to February 9, 2013.

[6] The Employer maintains a neutral position, but asserts it posted the *Dana* notices correctly. As described in the following sections, the result of a proper posting would be dismissal of the instant petition.

[7] A third argument, that the petition is inappropriate because Petitioner seeks an election in a unit no longer co-extensive with the recognized unit, is raised by the Union in the record. I have addressed this issue in the analysis section, although it appears the Union dropped this line of argument during the hearing. I have not addressed the Union's fourth argument, that *Dana* was incorrectly decided, as it is the Board's current law and I am required to apply its directives.

Below, I have set forth the relevant evidence contained in the record, as well as the legal framework of the Board's *Dana* decision and its modification of the recognition and contract bar doctrines. Following that portion of the Decision, I have applied the *Dana* standards to the evidence and articulated the rationale for my determination and conclusion. In conclusion, I have addressed the details of the directed election and the procedures for requesting review of this Decision.

II. RECORD EVIDENCE[8]

A. The Employer's Operations and Bargaining History

The Employer employs numerous employees in operating a large and complex nationwide communications network, including technical, retail and administrative functions. The Union represents a number of bargaining units consisting of the Employer's employees, and the Employer and the Union have a longstanding collective bargaining relationship. The parties' bargaining history has established five appropriate bargaining units: (1) call centers; (2) inside sales; (3) outside sales; (4) network, and (5) information technology. In addition to this subdivision by function, the parties also separate bargaining units on a state by state basis. Accordingly, under this state/function categorization, the instant case involves the Employer's Washington network bargaining unit.

The parties maintain four collective bargaining agreements covering four geographic regions.[9] Each "Regional Labor Agreement" covers the five bargaining units described above in that region, assuming employees in each unit are represented. The parties are also signatories to a Memorandum of Understanding ("Memorandum"), with effective dates parallel to the collective bargaining agreement, addressing voluntary recognition of unrepresented employees who select the Union as their representative during the term of the parties' contracts. Pursuant to this Memorandum, once voluntarily recognized, the newly represented unit is "as soon as practicable...included within the existing and appropriate Labor Agreement…with respect to wages, hours, and other terms and conditions of employment."

In Washington, the approximately 140 employees in the network bargaining unit are employed at 11 locations, described in the record as follows:

Facility Designation:	Location:	Number of Employees:
Spokane Switch	Spokane, Washington	7
Colville	Colville, Washington	1
Wenatchee	Wenatchee, Washington	2

[8] The Employer called as witnesses Lead Labor Relations Manager Thomas Conway, Property Manager Gregory Vallelunga, Administrative Assistant Jennifer Whitney, Building Engineers Edward Burgos and Eric Walker, and Chief Engineer for Corporate Real Estate Neal McNeal. Petitioner called only himself and the Union did not present any witnesses. Petitioner was the only Washington network employee to testify at the hearing.

[9] The State of Washington is part of the Employer's "West Region." The "Regional Labor Agreement" for the West Region is referred to by the parties and in the record, as "the orange book."

Willows 2	Redmond, Washington	2
Willows 3	Redmond, Washington	81
Redmond Town Center 1	Redmond, Washington	2
Redmond Town Center 3	Redmond, Washington	14
Bothell 1	Bothell, Washington	2
Bothell 5	Bothell, Washington	10
Vancouver Sales Office	Vancouver, Washington	1
Tacoma	Tacoma, Washington	18

While most bargaining unit employees are physically located at the facility where they are assigned, some employees are "virtual" or remote employees. These remote employees spend little or no time at any physical facility. The 11 remote employees in the Washington network unit include all employees at the Spokane, Colville, Wenatchee and Vancouver locations, as well as one employee assigned to the Tacoma facility.

B. The Employer's Voluntary Recognition

In September of 2009 the Union submitted written union representation authorizations from the previously unrepresented Washington network employees.[10] Pursuant to the parties' Memorandum, the authorizations were provided to the American Arbitration Association, and on September 18, the Association certified the Union's majority status. Accordingly, the Employer recognized the Union as the exclusive collective bargaining representative of the Washington network employees, and by letter dated September 25, notified Region 19 of the voluntary recognition.

The notification resulted in case 19-VR-076, and on October 1, Region 19 sent the appropriate *Dana* notice to the Employer for posting. The notice was posted at the Bothell 1, Redmond Town Center 1, Redmond Town Center 3, and the Vancouver sales office locations on October 9; and at the Willows 2, Willows 3, and Tacoma locations on October 12.[11] Later, recognizing that remote employees may not be at the locations where the notices were posted, the Employer emailed notices to the remote employees on October 26.[12] Only the 11 remote employees received this email from the Employer; it was not sent to all employees.

[10] All dates are in 2009 unless otherwise indicated.

[11] "Certification of posting of *Dana* notice" forms were submitted to Region 19 as part of case 19-VR-076. With this form the individual who completes it indicates the notice has been posted *and remained posted for 45-days*. In this case, the forms and the testimony in the record make it clear the employees involved in the posting, Whitney, Burgos, Walker, McNeal, and possibly others, misunderstood the certification. They completed the certifications immediately after the posting, rather than at the conclusion of the 45 days as directed.

[12] Petitioner is not a remote employee, and the Employer did not email him a notice.

Following its voluntary recognition, and consistent with the parties' Memorandum, the Employer prepared to change the terms and conditions of the Washington network employees employment to those of represented employees under the labor agreement for the West Region.[13] Prior to the change taking place, the Employer distributed information regarding the changes via front-line supervisors and managers to affected employees.

C. The Willows 3 Posting

Petitioner is a network control engineer and one of the approximately 80 network employees employed at the Employer's Willows 3 facility. Willows 3 is a two-floor building, and on the second floor contains a network operations center and administrative cubicles, where most employees work. The first floor contains extensive mechanical and electrical equipment, as well as offices, restrooms and a breakroom. Chief Engineer McNeal posted the *Dana* notice for Willows 3 on a bulletin board, adjacent to the first floor breakroom ("1st floor kitchen bulletin board"), on October 12.

Petitioner asserts that while he was generally aware of union organizing activity in the summer, organizing campaigns had taken place in the past as well. The Petitioner further asserts he first heard about the Employer's recognition of the Union as the Washington network employees' representative in late October or early November, when supervisors began describing the upcoming changes in terms and conditions of employment related to union representation.

According to the Petitioner it was at this point, by Petitioner's best estimate on about November 2, that one of the network employees contacted an outside party for information. The Petitioner asserts that only after this coworker described the requirements of a *Dana* notice to him was he aware of his rights regarding filing a decertification petition, and the potential existence of a workplace posting. Petitioner asserts he first looked for a *Dana* posting after his coworker informed him of the notice requirement. Petitioner specifically states he looked at all bulletin boards in Willows 3, including the 1st floor kitchen bulletin board, which is the board where McNeal had in fact posted the *Dana* notice on October 12.[14] According to Petitioner, he did not see a *Dana* notice at any location, including the 1st floor kitchen bulletin board.

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[13] The record contains an Employer-generated document titled "Movement from Management into Bargained Positions Time Line" that details the transition of the Washington network employees' terms and conditions of employment. The process was scheduled to occur between November 8 and December 1, as wages and benefit plans transitioned. There is no evidence in the record that the Employer and Union executed any specific agreement regarding the Washington network employees. Instead, it appears the Employer merely selected November 8 as "the earliest practicable date," in accordance with the parties' Memorandum.

[14] Petitioner described the bulletin boards he checked as follows:

> "…one inside the network operations center next to the voice facilities. And then there are a couple next to the data facilities and a couple next to the management facilities. Also, there is two kitchen-type coffee rooms that have bulletin boards. I don't believe these were official bulletin boards though for HR to use but I looked on those as well. And there's a bulletin board above the copy machine center, which is out in the cubicle area and even a few in the hallways that lead to and from these places."

From the record as a whole it is clear that one of the "kitchen-type coffee rooms" bulletin boards Petitioner described is the 1st floor kitchen bulletin board where McNeal posted the *Dana* notice at Willows 3.

Petitioner and coworkers began collecting signatures for the instant petition in November. In late November a coworker in Spokane emailed Petitioner a copy of a *Dana* notice, the first time Petitioner observed one of the notices in question. After visiting the Board's Region 19 Office for assistance, Petitioner filed the instant petition on December 22. Petitioner asserts it was not until after the filing of the petition that he observed a *Dana* notice posted on the 1st floor kitchen bulletin board in Willows 3.

McNeal, who had posted the notice at Willows 3, admits that he did not return to the 1st floor kitchen bulletin board during, or at the conclusion of, the 45-day posting period.[15] McNeal testified he did not return to the bulletin board until December 31, at which time he observed the posting was missing. He personally replaced the posting on the same date.

D. The Bothell Posting

Petitioner does not work at the Bothell campus, and he has no connection with either Bothell location where network bargaining unit employees are employed. However, Petitioner does assert, independent of any notice problem at Willows 3, that an asserted deficiency in the notice at the Bothell campus provides an independent basis for allowing his petition to proceed.

The Employer's Bothell campus consists of 8 buildings, with network employees employed at 2 locations. Bothell 1, where 2 network employees work, is approximately 2 blocks away from Bothell 5, where 10 network employees are employed. One *Dana* notice was posted at the Bothell campus, on a shared Human Resources/Union bulletin board next to a café at the Bothell 1 location.

At hearing, Building Engineer Burgos, who posted the notice, testified he placed it on this bulletin board, shared by the Union, because "it was regarding the Union." From Burgos's testimony it appears he assumed, because the *Dana* notice referenced the Union, it related to already represented employees in a different bargaining unit. He relied on this assumption in placing the notice, but he also chose the bulletin board because it was "conspicuous," and adjacent to a food service area used by employees from across the Bothell campus.

No employee employed at the Bothell campus, other than Burgos, testified at the hearing. The Bothell notice was posted on October 9, and there is no contention that it was removed, or at any time was absent.

III. LEGAL ANALYSIS

A. Recognition Bar

In *Dana Corp*., 351 NLRB 434 (2007), the Board established a new policy for decertification or rival union petitions filed subsequent to an employer's voluntary recognition of a union. Previously, the Board applied the recognition bar doctrine in voluntary recognition cases, barring the processing of a decertification petition for a reasonable period of time following an employer's voluntary recognition of a union. *Id.* at

[15] The posting period at Willows 3 would have concluded on Thursday, November 26. As November 26 was a Federal holiday, a petition received on Friday, November 27, would have been considered timely.

437. In *Dana*, however, the Board stated employees' interest in free choice would be better protected in the voluntary recognition context by applying the recognition bar doctrine only where:

> (1) employees in the bargaining unit receive notice of the recognition and of their right, within 45 days of the notice, to file a decertification petition or to support the filing of a petition by a rival union, and (2) 45 days pass from the date of notice without the filing of a valid petition. *Id.* at 434.

Accordingly, following voluntary recognition, the Board will process a decertification petition, with the requisite showing of interest, unless the proper notice has been posted for 45 days. *Ibid*.

As a practical matter, the Board required that the notice, posted in conspicuous places throughout the workplace, must include: (1) the date of recognition; (2) a description of employees' Section 7 rights to be represented by a union of their choice or no union at all; (3) an employee's right to file a decertification petition, supported by thirty percent or more of the unit, within 45 days of the posting of the Board notice; (4) an employee's right to support a rival union petition, supported by at least thirty percent of the unit, filed within 45 days of the posting; and (5) assurances that a timely and properly supported petition will be processed in accordance with the Board's normal rules and procedures. *Id* at 443. In the *Dana* decision, the Board requested the General Counsel prepare and distribute such notices for use by Regional Offices, which has been done as part of the Board's "VR" case procedures. See OM 08-07, *Dana Corp.*, 351 NLRB No. 28 (Direction to Regional Offices regarding VR procedures).

The Willows 3 Notice was posted on October 12. Accordingly, the 45-day window period would have elapsed on Thursday, November 26. The instant petition was filed on December 22, 27 days after this window period elapsed. Petitioner does not argue for a calculation of the 45 days that would place his filing of the petition within the *Dana* window period. Instead, Petitioner argues because the posting at the Willows 3 facility was deficient, the preconditions established by *Dana* have not been met, thus the recognition bar does not apply, and the petition is therefore appropriate.

Before proceeding, I will note an important distinction, and an argument not before me. Petitioner does not assert that *actual* notice to all employees is required under *Dana*; i.e. the 45-day period is tolled until each employee is aware of their rights. It is not entirely clear from the record when Petitioner learned of his rights to file a decertification petition; in the discussion with his coworker on November 2, when he first received a copy of the notice in late November, or on December 22 when he visited the Regional office. Petitioner's personal knowledge is not, however, relevant. Under *Dana*, if the notice was appropriately posted for 45 consecutive days, the window period would close even if employees had never seen or read the notice. The notice requirement of *Dana* provides an *opportunity* for employees to learn of their rights, and here Petitioner is asserting the deficient posting denied him that opportunity.

The evidence reveals, by McNeal's testimony, that a *Dana* notice was posted in a conspicuous location, the 1st floor kitchen bulletin board, at Willows 3 on October 12. The evidence also shows, by Petitioner's testimony, that on or about November 2, the *Dana* notice was no longer present on the 1st floor kitchen bulletin board where McNeal had

posted the notice. Finally, the evidence further shows, again by McNeal's testimony, that on December 31 the notice was not present. No further employee testimony was offered by the parties regarding the Willows 3 posting. Based on the this evidence, in total, I must conclude that the *Dana* notice was present for some unknown period of time between October 12 and November 2, but that no notice was present in Willows 3 between November 2 and December 31.

In reaching this conclusion, I note the Employer took no steps to remove the posting after the 45-day period expired, and that the record supports the conclusion that the Employer acted in good faith in attempting to comply with the *Dana* notice requirements. However, McNeal discovered the posting was not present on December 31, and he had not returned to the posting at the conclusion of the 45-day period. This supports the inference that no posting was present at Willows 3 at least beginning November 2.

Dana requires posting of the notice for 45 consecutive days in order for the recognition bar to apply. Here, even assuming facts most favorable to the Union and Employer, the posting at Willows 3 would have been present no more than 21 days, from October 12 to November 1. Petitioner's testimony that the notice was absent during most of the 45-day period is uncontroverted in the record, and is supported by McNeal's finding in December.[16] As a result, I must conclude that the Willows 3 posting was insufficient to meet the requirements of *Dana*.[17]

To the extent the Employer or Union suggest the "Certification of Posting of *Dana* notice" form submitted by McNeal, whereby he certified the posting was posted at Willows 3 for 45 consecutive days, is a sufficient evidentiary basis to find to the contrary, I disagree. By their testimony McNeal, Whitney, and others clearly misunderstood the certification, completing it immediately after the posting, not at the completion of the 45 days as directed. Indeed, McNeal testified he did not observe the posting during the 45-day period, he only returned and completed the Willows 3 certification, dated January 4, 2010, after he checked the Board on December 31 and found the notice absent. Under the circumstances of this case it is clear the document does not certify what it purports to, and accordingly any attempt to rely on this document would be an inappropriate reliance on form over substance.

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[16] At hearing, Petitioner made at least one hearsay statement regarding other employees at Willow 3 supporting his assertion that a *Dana* notice was absent. I disregard this assertion and in no way rely on this hearsay evidence in reaching my conclusion. Nevertheless, no witness testified contrary to Petitioner on this point.

[17] As noted, Petitioner attacks the sufficiency of the posting at the Bothell locations as well, both because the notice was posted at only one location, and because the notice was placed on a bulletin board apparently shared by Human Resources and the Union. *Dana* does not address this level of detail regarding the posting, requiring posting at every facility in a multi-location unit, or specifying what type of bulletin board must be used. In regard to Bothell, the Employer made an assessment of the "conspicuous places in the workplace" requirement, based on its knowledge of its facilities, and placed the notice in a reasonable location. Burgos's apparently mistaken impression that the Notice related to already represented employees outside the network unit is not sufficient to invalidate the reasonableness of the location. He testified he also chose the location because it was "conspicuous."

B. Contract Bar

Under the Board's well-established contract bar principles a contract having a fixed term of more than 3 years operates as a bar for as much of its term as does not exceed 3 years. *General Cable Corp*., 139 NLRB 1123 (1962). In *Dana*, however, addressing the interplay between its modifications to the recognition bar and contract bar principles, the Board stated in reference to the 45-day window:

> These rules apply notwithstanding the execution of a collective-bargaining agreement following voluntary recognition. In other words, if the notice and window-period requirements have not been met, any postrecognition contract will not bar an election. *Id*. at 441.

Accordingly, parties with an established collective bargaining relationship are not able to foreclose the opportunities for decertification by simply applying an existing contract to a voluntarily recognized unit.

The Union makes the argument that the collective bargaining agreement which now covers the Washington network employees, effective February 8 and applied to the employees following recognition, acts as a contract bar. By all accounts, this is a postrecognition contract precisely of the type identified in *Dana* as not barring an election where "the notice and window-period requirements have not been met." Having found the notice and window periods have not been met, I conclude, under *Dana*, that a contract bar does not prevent the instant petition from proceeding to an election.

C. Scope of the Petitioned-for Unit

It is also well-established Board law that a decertification election must almost always be held in a unit coextensive with the recognized or certified unit. *Mo's West*, 283 NLRB 130 (1987); *Campbell Soup Co*., 111 NLRB 234 (1955). Here, it is not disputed that the parties' bargaining history and voluntary recognition Memorandum recognize a Washington network bargaining unit. The apparent objection is whether, when the terms of the West Region agreement were applied to the Washington network unit, the unit was modified such that it no longer was "coextensive with the recognized unit."

At the opening of the hearing, the Union asserted the Washington network employees had been "…accreted into a nationwide unit," and that the Washington network employees were no longer "a separate, self-standing bargaining unit." Both the Petitioner and the Employer took the position the appropriate bargaining unit, should an election be directed, was the Washington network unit, i.e. the unit described on the *Dana* notice. At the close of the hearing, the parties did not stipulate to the appropriate unit should a directed election take place, but the Union appeared to concede the "group that's described in the *Dana* notice" was the appropriate unit, although accretion was again referenced. On brief, the Union has not raised this issue. In total, it appears the Union has dropped this line of argument.

However, to the extent this issue is before me, I do not find the scope of the petitioned-for unit presents a barrier to an election. Clearly, the Washington network employees have not been placed in a larger unit by an accretion. Insufficient evidence exists in the record showing an overwhelming community of interest, and absent such

evidence I cannot make an accretion finding. Further, short of an accretion, it is by no means clear the Washington network employees have been merged into a larger unit. While the Union makes reference to a "nationwide" unit, the documents in the record, including the West Region Labor Agreement and the voluntary recognition Memorandum, suggest the Washington network employees remain a distinct bargaining unit, simply one of many recognized units covered by the terms of the West Region contract.

Absent evidence of an accretion or a merger, and lacking even a clear argument asserting the scope of the unit should bar an election, I do not find it necessary to explore the issue further, and I instead find it constitutes no bar to the election.

IV. CONCLUSION

Based on the foregoing, the entire record, and having carefully considered the parties' briefs, I conclude that the petitioned-for election is appropriate. The Union and Employer, as parties to a voluntary recognition, subsequently failed, at the Willows 3 location, to meet the *Dana* requirements and to properly put employees on notice of their 45-day window to file a decertification petition. Accordingly, recognition and contract bar principles are not applicable. In light of the above, I find the instant decertification petition is appropriate.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate unit ("Unit"):

> All full time and regular part time AT&T Mobility employees in the Network Business Unit, based in the State of Washington, including employees employed in the classifications of Clerk Administrative, Engineer Associate Wireless Translations, Engineer Wireless Translations, Engineer II Network (NE), Engineer III Network (NE), Network Control Engineer, Senior Network Control Engineer, Technician I Cell, Technician II Cell, Technician III Cell, Technician II Switch, Technician III Switch, but excluding professional employees, confidential employees, managerial employees, and guards and supervisors as defined in the National Labor Relations Act.

There are approximately one hundred forty (140) employees in the unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been

discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by COMMUNICATIONS WORKERS OF AMERICA, LOCAL 37083, AFL-CIO.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174 on or before **January 29, 2010.** No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **February 5, 2010.** The request may be filed through E-Gov on the Board's web site, ***http://www.nlrb.gov***, but may not be filed by facsimile.[18]

DATED at Seattle, Washington on the 22nd day of February, 2010.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

[18] To file a request for review electronically, go to ***http://www.nlrb.gov*** and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary, and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, ***http://www.nlrb.gov***.